

February 17, 2000

Mr. Bion M. Gregory
Legislative Counsel
State Capitol, Room #3021
Sacramento, California 95814

Dear Mr. Gregory:

This letter transmits the California Environmental Protection Agency (Cal/EPA) Organizational and Fiscal Review. This report was prepared in response to direction provided to the Secretary of Cal/EPA in the 1999 Governor's Budget. Specifically, the Governor requested that the Secretary of Cal/EPA:

"...review the manner in which environmental programs are delivered, the structure of environmental organizations, and the funding mechanisms that are used to support environmental activities. Following this review, the Secretary will recommend to the Governor appropriate changes to the structure of environmental programs to better meet environmental objectives."

This request was further defined in the Supplemental Budget Language, as follows:

Agency Structural Review: On or before January 10, 2000, the Secretary for Environmental Protection shall report to the chairs of the fiscal and pertinent policy committees of both houses on the following:

- a) The results of the Secretary's review of the agency's structure undertaken pursuant to the Governor's request;
- b) The progress the agency has made toward coordinating and consolidating the agency's strategic plan with the strategic plans of each of the agency's boards and departments;
- c) The agency's efforts to address cross-media regulatory issues including, but not limited to, (i) hazardous waste reclassification, (ii) landfill regulatory activities, and (iii) cleanup of MTBE contamination.

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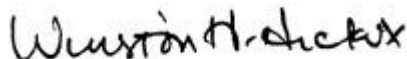
Agency Funding Review: The Secretary for Environmental Protection shall review the funding provided for environmental protection programs to ensure that those activities which pose the greatest environmental and public health risks are given priority for funding. On or before January 10, 2000, the Secretary for Environmental Protection shall report to the chairs of the fiscal and pertinent policy committees of both houses on the results of the review.

Responses to the requirements of "a" and "b" of the structural review request are contained in my transmittal letter to the Governor. Items "c, (i), (ii), and (iii)" are being addressed through separate transmittals to the Governor and to the Legislature.

Fundamentally, Cal/EPA must review the effectiveness of its programs on an ongoing basis in order to ensure protection of California's environment. Based on my review, I believe that the premise on which the Agency was founded is more valid than ever before, and opportunities for improvement continue to exist. Over the next several months I will be working with the Administration, the Legislature, business interests and the environmental community to explore these opportunities.

Working together we can continue to build a world-class organization that will fully protect the public health of our citizens and enhance the quality of our environment.

Sincerely,



Winston H. Hickox
Agency Secretary

Enclosures

cc: See next page.

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cc: Mr. E. Dotson Wilson
Chief Clerk of the Assembly
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Honorable Sam Aanestad
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Honorable Mike Briggs
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Honorable Tom Hayden
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Honorable Maurice Johannessen
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Honorable Dick Monteith
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cc: Honorable Virginia Strom-Martin
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February 17, 2000

Honorable Steve Peace
California State Senate
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Honorable Denise Moreno-Ducheny
California State Assembly
State Capitol, Room 6026
Sacramento, California 95814

Dear Senator Peace and Assembly Member Ducheny:

Protecting human health and the environment is a job that is never done. Our children will judge our efforts by what we knew about the health and environmental impacts of pollution, what we did to learn more, and what we did with the information available to us.

California has always been a national pioneer in establishing the environmental programs now housed in the boards and departments of Cal/EPA, acting over time to reduce individual environmental risks posed by air and water pollution, solid and hazardous waste management, and pesticide application.

The reorganization of these programs and placement under the umbrella of Cal/EPA evidenced a realization that many environmental health issues are cross-media both in their origin and their solution, that leadership is needed to assure consistent policy and performance, and that environmental quality issues as a whole are sufficiently important to justify a cabinet-level voice.

What we know today, including the questions that we know must still be answered, is vastly greater than what we knew only a decade ago. Our knowledge base provides ever-increasing evidence of the sensitivity of the environment and human health to chemical impacts. These impacts occur across media and, because of bioaccumulation and reproductive effects, across time.

We also have enough experience to know that economic prosperity and environmental protection are not only consistent with but are dependent upon each other. Without economic prosperity we will not have the resources to protect the environment; without environmental protection economic prosperity is a hollow and short-lived statistic.

The revolution in information technology in the last decade makes new information available almost instantaneously, without a concomitant increase in our ability to absorb, prioritize, and use that data so as to maximize environmental protection. This revolution presents an unprecedented opportunity to harness precise information about environmental conditions to protect the public in cost-effective and sensible ways.

The opportunities for action are endless; our resources are not. If Cal/EPA did not exist with a mandate to address cross-media impacts and prioritization of environmental protection efforts, logic compels the conclusion that we would create it now.

Over the last few months I have reflected on the structure, funding, and performance of Cal/EPA and its constituent boards, departments, and office (collectively referred to as BDOs). I have been assisted immeasurably by outside consultants, R&G Associates, who in turn benefited by interviewing scores of people inside and outside of government, including members of the executive and legislative branches. Their report, which I am transmitting herewith, provides a snapshot of Cal/EPA taken by a third party camera. **The report supports my own conclusion that this Agency should have an important role in protecting human and environmental health, but that much remains to be done.**

The R&G report reaches some conclusions that others have reached before. First, if we were tailoring an organizational structure for environmental programs out of whole cloth, we would not create the crazyquilt of structures that we have today: boards of differing composition, departments, an office, and an agency with tenuous authority and inconsistent influence over individual BDOs. Second, we would probably not organize programs around individual media and then have other programs devoted to cross-cutting activities. As R&G suggest, there are many tidier, more efficient, or more participatory ways to organize these programs.

Certainly we would organize today in a manner that reflects the importance of basic scientific information and information management and that requires cross-media approaches to regulation, permitting, enforcement, and pollution prevention.

The R&G report presents some possible alternatives to the current authority of this agency and the organization of the BDOs; other alternatives undoubtedly can be developed as well. At some point it will be useful to consider these basic changes in the context of using our scarce resources and limited time not only to maximize environmental protection now but also to lay the groundwork for better approaches to this task in the future.

The 1999-2000 budget invited me to consider how Cal/EPA can be improved, both at the BDO and agency level. Leaving aside issues of authority and possible reorganization for now, I think my basic answer is that we have to “think different.” Our current institutions (BDOs) are like ships at sea: large and powerful but somewhat slow-moving and hard to turn on a dime. What we need is more flexible and responsive vessels that can react quickly to new information and new opportunities for action. In pursuing these changes we need to think boldly and act cautiously, conscious of the magnitude of effort that is required to achieve even modest change.

I set forth below some initiatives that I would like to pursue, and have the BDOs pursue in the areas of risk assessment, risk management, and enforcement. These are basic and important functions that need strategic thinking and functional improvement. First, however, I want to address functions that Cal/EPA, at the agency level, can uniquely perform and which I want to act on now: cross-media coordination and information dissemination and management.

Cross-Media Coordination

Not all environmental problems are cross-media in nature, but all programs need to consider cross-media issues in prioritizing problems for action and in structuring solutions.

Cross-media consideration of impacts begins with consideration of the basic scientific information developed by OEHHA regarding the toxicological and epidemiological risks presented by various substances or products. If OEHHA determines that a substance or mixture should be viewed as a carcinogen, reproductive hazard, or persistent bioaccumulative toxin, we need a process by which this agency can interact with the BDOs and by which the BDOs consider the impact of such findings for their regulatory and other programs.

To answer one of the questions posed by the Legislature in their Supplemental Language in the Budget, this is one place to start with hazardous waste reclassification and regulation of what goes into (or is potentially released by) any type of landfill.

Our current criteria for waste classification are multi-pathway (cross-media), a fact upon which the National Academy of Sciences has commented favorably as compared to the single-medium approach of federal EPA, and should be seen as a model. Nevertheless, our current system, with few exceptions, does not consider the chronic risk information available from OEHHHA.

Consideration of the cross-media implications of toxicological information is not sufficient. We must also consider the cross-media impacts of the fate and transport of these substances in the environment. If dioxin enters San Francisco Bay through airborne deposition as well as waste discharges, we need to address both sources and to make sure that our proposed solutions do not create other problems. Similarly, in developing TMDLs we have to consider air pollution depositing into impaired waterways. The cleanup of MTBE, another issue raised by the Legislature, is already obtaining cross-media scrutiny by the adoption of water cleanup standards and standards for air emissions that can assure that air-stripping of contaminated water does not result in simply transferring MTBE to ambient air.

This year we have organized our budget and legislative reviews of BDO proposals to assure cross-media prioritization of activity and cross-media consideration of impacts. It is my intention to have the under and deputy secretaries of Cal/EPA have some responsibility for cross-media issues, be it prioritization of issues for policy consideration, legislation, or enforcement. We will also assure that the BDOs respond to cross-media issues that we address during the budget year in order to assure a cross-media approach to important issues by chemical, by incident, by location, and by industry. I am also interested in pursuing the formation of an informal but effective intra-Agency team for responding to significant environmental releases such as the Dunsmuir railroad chemical spill or the Westley tire fire. It is important that we be able to respond to these events in a systematic fashion.

We will pursue whatever reforms are needed at both the agency and BDO level to achieve more cross-media coordination.

Information Dissemination and Information Management

Information dissemination. It is often said that we live in a knowledge-based society. In addition, the astonishing increases in productivity accompanying the new tools of information dissemination and information management provide us with opportunities to acquire and apply scientific and engineering knowledge that we would not have had in earlier decades.

The sad fact is that there is no software program that tells us which scientific research is important. No program tells us which information calls for urgent action or which information indicates that government intervention is no longer needed. For that we need skilled brainpower, especially if we are to flag potential cross-media issues for attention.

Cal/EPA is not currently structured at the agency level to be a central nervous system for information prioritization and dissemination to the BDOs. This information will usually originate in the BDOs, where researchers, applied scientists, and engineers continually learn of new data from California and around the globe, and in our higher education system, where teaching and research units are devoted to environmental health and engineering research and education. It will take some time to develop a flexible and agile structure for plumbing the knowledge that we have in a way that achieves prioritization, appropriate dissemination, and action, but we urgently need to try, especially with regard to consideration of chronic risk and bioaccumulation.

Information management. As reported by R&G, we have common hardware but somewhat uncommunicative software among the different BDOs. This lack of common language inhibits the real-time sharing of information on sites, enforcement activities, sensitive locations or receptors, and other data. I agree that we need an agency-level Chief Information Officer who develops information management guidelines and standards for the entire agency. While the BDOs need their own information technology units, there is no excuse for our not having a common language with which to share ideas and data.

Information-sharing should not stop with the BDOs and agency. Where appropriate, we need to develop information that can be shared with federal and local agencies and the public in a transparent, real-time fashion. Currently, some of our Web sites are out of date because of a failure to update them or because of lagging technology. As much as possible with our resources, we need to assure that our general technology upgrades give us the potential for this general type of data sharing.

Cal/EPA's performance depends on obtaining and appropriately using the latest scientific information. We must and will commit resources to continuing improvements in information dissemination and management.

Risk Assessment

Our basic and applied risk assessments use good science and scientifically validated protocols. As a result of past scrutiny and advice, as reported by R&G, our basic risk assessment at OEHHA and applied risk assessments at the boards and departments

appear to be consistent with each other and with those of federal agencies. We also appear to have a roughly appropriate division of labor between OEHHA's function of performing basic risk assessments and setting risk assessment guidelines, and the boards' and departments' function of performing applied risk assessments.

We do need to assure that risk assessments are consistent and of consistently good quality throughout the Agency. Assessments which over-estimate risk can cause needless regulatory requirements; assessments which under-estimate risk undermine environmental and human health protection. As we perform both ecological and human health risk assessments, we must be careful to use the best science, addressing both acute and chronic risk, and the most recent information. In specific programs we may need to create a liaison between the Agency or OEHHA and the program in question to assure that risk assessment methodologies are being appropriately implemented. We also need to assure that risk assessments performed for a specific purpose, e.g. contaminated site cleanup, are consistent in considering all pathways for potential harm. Achieving consistency in applied risk assessment will lead to consistency in risk management decisions. Forum shopping to avoid appropriate risk assessment or management is not acceptable within Cal/EPA or between State and local agencies, for neither the environment nor our protection of it can depend on these jurisdictional niceties.

R&G have also pointed out problems with the funding of OEHHA. When it comes to basic toxicological and epidemiological assessments, funding sources should not determine the scope of inquiry or the type of outcome. We need basic risk assessments, as well as applied, that consider multi-media pathways and control needs. As a result, we need to turn to the General Fund for OEHHA funding. Using the General Fund for this general type of public benefit is the most basic and appropriate use of General Fund monies.

Risk Management

Each board and department has its own statutory mandate for risk management. Neither R&G nor I have reviewed the potential for unifying all of these mandates, but past exercises of that type have not borne fruit. Nevertheless, the single-medium focus of the air and water boards and activity focus of the CIWMB and departments cause problems of overlap and delay for industry and missed opportunities for protection in the eyes of the public. It is especially troubling that OEHHA basic chronic risk information may not be considered by all the BDOs in setting and adjusting priorities for protective regulation.

The R&G report contains several alternatives that would promote cross-media management, including electronic reporting with standardized data, cross-media databases, cross-media review procedures, and procedures to accomplish cross-media management where appropriate. I plan to pursue these suggestions.

Especially where complex air, water, soil, and human exposure issues coexist, as at some larger contaminated sites, sites where many hazardous waste management activities occur, and sites where petroleum exists naturally (e.g. in parts of Los Angeles), we need a clear State lead agency and just as clear participation by other agencies with knowledge and authority over these issues.

At school sites, the Legislature has designated DTSC as the lead agency, and DTSC has established a Schools Unit to address these issues comprehensively, with appropriate input from other agencies. We can and will assure the construction and operation of safe schools in California.

At hazardous waste landfills, DTSC is again the lead agency. At landfills with municipal solid waste, we already have a division of authority created by the Legislature between the CIWMB and the SWRCB; we need to assure that air quality issues are considered as well. At other sites with soil and groundwater contamination, sometimes referred to as Brownfields, we must have clear State standards for assessing and managing risks based on long term scenarios for human occupancy and the best scientific and engineering information, so that local governments can assess opportunities for development efficiently and clearly.

These are a few examples of the need for cross-media management processes. We need to establish them for emergency situations as well. More importantly, as discussed earlier, we need to assure that cross-media risk management begins with well-crafted rules of general application that regulate economic activity appropriately to prevent risk rather than solely to react to it. Risk management must mean pollution prevention as well as pollution response and remediation, and we must use incentives and partnerships with communities, in addition to rules and standards, to achieve the protection we need and deserve.

Enforcement

Enforcement of the law must be consistent, predictable, fair, and equitable.

But there can be no equivocation or hesitation in our pursuit of individuals or businesses that violate laws that protect human health and the environment.

Enforcement resources have dramatically declined; we must restore them.

Emphasizing compliance is appropriate in our discussions with industry, but as the R&G report makes clear, giving preeminence to real enforcement is the key to making compliance a reality. That message is true whether the inspector is from State or local government.

We need to prioritize enforcement efforts to address the worst violators and environmental harm first. We need a sufficient numerical enforcement presence to deter violators, not a sporadic effort that depends on exorbitant fines or penalties on the few who are caught to create deterrence. We also need to assure that our inspectors are sufficiently trained to be able to mete out quick and sure justice that is designed to stop illegal activity as quickly as possible, and to refer cross-media problems to other appropriate agencies. To the extent that we deputize local governments to enforce State laws, as with CUPAs, we must assure that enforcement attitudes and accomplishments are consistent with those of their State counterparts. Without consistency on a statewide basis, there is no level playing field for industry or consistent level of community protection.

The R&G report contains several alternatives that should be pursued: the creation of an enforcement matrix at each board and department, consistent with statutory authority and the severity of harm caused; creation of an enforcement advisory group at each board and department to assure consistency, including an Agency group that will assure cross-agency consistency; and enhanced data-sharing on enforcement activities. In addition, I am committed to cross-media enforcement efforts coordinated at the Agency level.

Strategic Plan and Funding

I am committed to preparing a Statewide Strategic Plan for Cal/EPA that will encompass the plans of the BDOs within a single Administration Strategic Plan.

There can be no substitute for an overall framework within which to pursue protection of human health and the environment. The R&G report is correct that this is not just a paper exercise, but one which influences the future of our activities in this state. Cal/EPA appointees from the new administration have reviewed the existing strategic plans. A new plan, which realigns existing plans under a single strategic vision, is scheduled for completion by the end of this fiscal year.

I am also persuaded that the need to consider funding levels and sources for our environmental protection activities is vital, and must be a continuing priority activity both at the Agency and BDO level. Polluters should pay for the harm they do. Users of government services who derive a benefit from those services directly, as

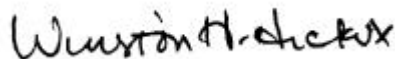
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in the acquisition of a license to sell a new pesticide or operate a facility with an environmental permit, should pay for those services. We do need to consider how to best pay for other services that benefit the public directly, such as enforcement, or indirectly, such as pollution prevention education. It may be that industry should pay for these activities in one way or another, but there may also be more of a role for the General Fund than there is now. Consideration of General Fund expenditures obviously raises issues of relative priority with other essential governmental functions as well, and further study needs to incorporate the views of the Department of Finance as well as concerned stakeholders.

Conclusion

We live in a great state, one that has grown from one and a half million people a century ago to thirty-four million-plus today and is projected to double in size in this next century. Our opportunities for economic growth and concomitant protection of our natural resources and fragile environment have never been greater or more necessary. I very much appreciate the opportunity I have been given to lend a hand in this grand enterprise, and hope that these reflections will be useful to you.

Sincerely,

A handwritten signature in dark ink, appearing to read "Winston H. Hickox". The signature is written in a cursive, slightly slanted style.

Winston H. Hickox
Agency Secretary

Attachment

cc: See next page

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